



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN**

**GERALD C. MANN  
ATTORNEY GENERAL**

Honorable Jas. M. Simpson, Sr.  
County Attorney  
Concho County  
Paint Rock, Texas

Dear Sir:

Opinion No. C-4108

Re: Should an official in a county having less than 20,000 inhabitants whose fees of office after all expenses are paid amount to \$2,000.00, and who receives in addition to such fees an ex officio salary of \$900.00 pay anything back to the county as excess fees?

Your recent letter requesting the opinion of this department on the above stated question reads in part as follows:

"The opinion requested in this letter is asked for by Mr. Leo Molloy, the County and District Clerk of this County, and related to fees of office and ex-officio salary in counties of less than 20,000 inhabitants. The specific question upon which Mr. Molloy requests an opinion is as follows:

"Should an official in counties having less than 20,000 inhabitants whose fees of office after all expenses are paid amount to \$2000.00, and who receives in addition to such fees an ex-officio salary of \$900.00, -should such official pay anything back to the County as excess fees?"

Concho County has a population of 6,192 inhabitants according to the 1940 Federal Census, and the county officials of said county are compensated on a fee basis.

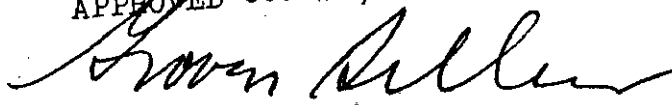
Articles 3883 and 3891, Vernon's Annotated Civil Statutes, permit a county clerk, or a district clerk, or a

"joint clerk", under Article 1903, Vernon's Annotated Civil Statutes, in counties having a population of less than 20,000 inhabitants, to retain as compensation and excess fees the maximum sum of \$3,000.00. Articles 3895 and 3892, Vernon's Annotated Civil Statutes, expressly authorize the Commissioners' Court, when, in its judgment, such compensation is necessary, to allow compensation for ex officio services of the county clerk or "joint clerk", provided such compensation shall not increase the compensation of the county clerk beyond the maximum amount of compensation and excess fees allowed to be retained by him under the preceding articles. These articles, we think, clearly authorize the Commissioners' Court to allow the clerk of the county court, or as in this case, the "joint clerk", in counties having a population of less than 20,000 inhabitants, compensation for ex officio services, provided such compensation together with the fees retained by him under the preceding articles, does not amount to more than \$3,000.00 per annum. (See the case of Anderson County v. Hopkins, 167 S. W. 1019.)

The county clerk, or the "joint clerk", is entitled to retain all the compensation allowed by Article 3883, together with one-third excess fees allowed by Article 3891, until such one-third together with the amount specified in Article 3883, amounts to \$3,000.00 per annum. If the compensation allowed under Article 3883 and the excess fees allowed under Article 3891 do not reach the maximum of \$3,000.00 per annum, the Commissioners' Court is authorized to pay the clerk an ex officio compensation, provided such compensation, together with the fees retained by him under Articles 3883 and 3891, does not amount to more than \$3,000.00. Under the facts stated in your letter, the clerk will receive approximately \$2,000.00 as fees after all expenses are allowed as provided by law, and the Commissioners' Court has allowed an ex officio compensation in the amount of \$900.00, making a total of \$2,900.00 which the clerk receives. This amount does not exceed the maximum amount allowed by Articles 3883 and 3891, and as the clerk has not received the maximum amount allowed by these articles and the amount allowed by the Commissioners' Court does not exceed the maximum allowed by the preceding articles, we answer the above stated question in the negative.

Trusting that the foregoing fully answers your inquiry, we are

APPROVED OCT 22, 1941



FIRST ASSISTANT  
ATTORNEY GENERAL

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED  
BY COMMITTEE  
BY *Burt*  
CHAIRMAN

*Arnell Williams*  
Arnell Williams  
Assistant

AW:GO